

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-50828 of 2019.

Decided on:- March 24, 2021.

Dalip.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ajit Singh Lamba, Advocate for
Mr. Lalit Kumar Yadav, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

The petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.275 dated 15.06.2019 under Sections 313, 328, 376(2)(n) and 506 IPC as well as Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station City Tohana, District Fatehabad.

The aforesaid FIR was registered against the petitioner on the basis of statement made by the prosecutrix. As per the FIR, about 8 months back, the prosecutrix was appointed to a job in a canteen at Colonel School (Saint Joseph), Bhuna Road, Tohana. The petitioner was a contractor of that

canteen and during the course of employment, she had acquaintance with the petitioner-accused. Since she was in need of a rented accommodation, the petitioner promised to get her rented accommodation and took her to a house near Vegetable Market Road, Tohana. There, he made her to consume juice, whereupon she became unconscious. Taking advantage of her condition, the petitioner raped the prosecutrix. However, when she regained consciousness, she was told by the petitioner-accused of commission of rape upon her on which she told him that she would make a complaint to the police. The petitioner promised to marry her and stated that he was still unmarried. Thereafter, he continued committing rape upon her on false pretext of marriage. She became pregnant and was taken for ultrasound examination by the petitioner which could not be conducted as there was no Aadhar Card containing the name of husband of the prosecutrix. Thereafter, she was taken to a clinic in Googal Mari where doctor was not present and the petitioner got a drip installed with the help of compounder and gave her two tablets which resulted in0 abortion of her foetus. The petitioner again promised that he would call his parents to marry her. However, on 15.06.2019, the petitioner refused to marry her by saying that he was already married.

Learned counsel for the petitioner has argued that there is no specific date, time and place where the prosecutrix was subjected to the offence of rape. As per the FIR, the first episode of rape was committed about 8 months back and that fact was brought to the notice of the prosecutrix by the petitioner, which creates a serious doubt on the story propounded by the prosecutrix. The allegations under Section 328 IPC are again vague and not

supported by evidence. The petitioner was arrested in the case on 16.06.2019 and as on date, he is in custody for about 1 year and 9 months. Challan has already been presented in the Court. At the most, the relationship between the petitioner and the prosecutrix, if any, was consensual. Moreover, there is no evidence of termination of pregnancy of the prosecutrix.

Learned State counsel, on instructions from ASI Kheta Ram, has not disputed the custody of the petitioner. However, she has submitted that the allegation against the petitioner is that he committed rape upon the prosecutrix on the pretext of marriage despite the fact that he was already married. The copy of DNA report produced by learned State counsel, is taken on record.

I have heard learned counsel for the parties.

The petitioner is in custody since 16.06.2019. In the DNA report dated 13.07.2020, it has been concluded that the autosomal STR analysis indicates that male DNA profile is not indicated on source of item No.1 (underwear), which is necessary to compare with the DNA profile of Dalip son of Rajinder (source of item No.2).

Therefore, considering the DNA report and the custody of the petitioner and the fact that there is no specific date, time and place on which the rape was allegedly committed by the petitioner, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail bonds and surety bonds to the satisfaction of learned trial Court.

The observations made hereinabove shall not be construed as any expression of opinion on the merits of the case. The trial Court shall decide the case without being influenced with these observations in any manner.

March 24, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No